IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 364 OF 2006

1. SHRI SHAMSUNDER NARSINH DUBE,]
ADULT,]
2. SHRI JAIPRAKASH NARSINH DUBE,]
ADULT,]
3. SHRI OMPRAKASH NARSINH DUBE,]
ADULT,]
4. SHRI NARESH NARSINH DUBE,]
ADULT]
OCCUPATION OF ALL IS BUSINESS,]
RESIDENTS OF 2ND FLOOR,]
NALASOPARA SHOP POING CENTER,]
NALASOPARA(E), TALUKA VASAI,]
DISTRICT THANE,]..PETITIONERS

VERSUS.

1. THE STATE OF MAHARASHTRA]
2. THE CHIEF SECRETARY,]
STATE OF MAHARASHTRA,]
MANTRALAYA, MUMBAI.]
3. THE SECRETARY,]
HOME DEPARTMENT,]
MANTRALAYA, MUMBAI.]
4. MR. G.S.WAGSE,]
DY. SUPERINTENDENT OF]
POLICE, STATE C.I.D. KONKAN]
BHUWAN, NAVI MUMBAI. ....]..RESPONDENTS.

MR. P.K.DHAKEPHALKAR I/B. SHRI SACHIN DHAKEPHALKAR FOR THE PETITIONER.
SMT. U.V.KEJRIWAL APP FOR THE RESPONDENTS.

CORAM : SRI R.M.S. KHANDEPARKAR
AND SRI A.A.SAYED, JJ.
DATE : NOVEMBER 28, 2007.

ORAL JUDGMENT (PER SRI R.M.S. KHANDEPARKAR, J.)

1. By the present petition the Petitioners have sought for transfer of the investigation in the case initiated by lodging FIR being C.R. No. 131/2002 at Nalasopara Police Station, from the State C.I.D. to C.B.I. and for further direction to direct the Investigation Officer to file charge-sheet in the complaint case bearing C.R. No. 130/2002 lodged at Nalasopara Police Station by the Petitioners.

2. When the matter came up for hearing on 24th August, 2006, the learned A.P.P. after taking instructions from the Investigating Officer Mr. P.S. Raut, the Deputy Superintendent of Police, State C.I.D., who was present in Court at the relevant time, stated that the investigation in both the matters was almost complete and mere formality of filing the charge-sheets had remained and that the same would be filed on 11th of September, 2006 by 3.00 p.m. As in both the cases only charge-sheet had remained to be filed in the Court of Judicial Magistrate, First Class, Vasai and as it was informed that by the said date and time the same would be filed, while accepting the said statement made by the learned APP on the instructions

from the Investigating Officer, the Writ Petition came to be disposed of.

3. Sometime thereafter, in September, 2006, the State (respondent herein) took out an application, being Criminal Application No. 350 of 2006, seeking clarification of the Order dated 24th August, 2006 and when the said application came up for hearing on 11th September, 2006, it was informed on behalf of the State (respondents herein) that the charge-sheet in both the matters could not be filed by 11th September, 2006 and the same would be filed on 13th September, 2006 by 3.00 p.m.

4. It appears that the Respondents thereafter filed the charge-sheet in relation to C.R. No. 131/2002 whereas submitted "B" Summary Report in relation to C.R. No. 130/2002. In other words, the charge-sheet came to be filed wherein the Petitioners in this petition were arrayed as the accused and in case of the complaint filed by the Petitioners herein, the same was sought to be concluded by filing "B" Summary Report.

5. Being aggrieved by the said action on the part

of the Respondents herein, the Petitioners carried the matter before the Apex Court by filing Criminal Appeal No. 733 of 2007 and the Apex Court by its Judgment, dated 14th May, 2007, while considering the matter, observed thus :-

> " ..... It is submitted, and it is not controverted by the learned Counsel for the respondent- State, that the Deputy Commissioner of Police has filed a Charge sheet only in case against the appellants in FIR No. 131 of 2002 and not in FIR No. 130 of 2002, filed by the appellants and consequently the substratum of the Judgment of the High Court is gone. Obviously, the High Court was led to closing the writ petition in view of the submissions made by the Assistant Public Prosecutor on instructions that in both the cases, charge sheets were being submitted and under the impression that it would be for the parties to put forward their grievances, if any, before the Court once the charge-sheets are filed. It turns out that no charge sheet has been filed in the complaint of the appellants as held out before the High Court by the Assistant Public Prosecutor. In that situation, it is submitted by the Counsel for the appellants that the question whether the investigation has been fair, raised in the writ petition has to be decided by the Court on application of mind to all the relevant facts and this having not been done, the order of the High Court maybe set aside and the writ petition remanded to the High Court for decision afresh."

. Having observed so, the Apex Court ruled as under :-

> " In this situation we have satisfied that the writ petition requires to be reconsidered by the High Court in the light of all the relevant aspects. We therefore, allow this appeal and setting aside the order of the High Court

> remand the Criminal Writ Petition No. 364 of 2006 to the High Court of Bombay for a fresh decision thereon in accordance with law in the light of the facts that have emerged."

6. Thereafter, Criminal application No. 236 of 2007 came to be filed by the Petitioners in this Petition, which came up for hearing on 6th September, 2007, when the learned Counsel appearing for the Petitioners stated that the Petitioners were not pressing for the reliefs asked for in the said application and merely requested for early hearing of the present Petition. The request was granted and the matter was fixed for final hearing on 26th September, 2007. As the matter could not reach for final hearing on 26th September, 2007, the same was fixed for hearing on 1st October, 2007. On that day, the same was taken up for hearing and since none were present on behalf of the Petitioners, with the help of learned A.P.P. after perusing the records, the matter was disposed of by the Judgment of the said date.

7. The Petitioners, thereupon filed Miscellaneous Application No. 350 of 2007, which came up for hearing on 20th November, 2007 and by the Order of that day, the Judgment dated 1st October, 2007 in the writ petition was recalled and the said Writ Petition was

fixed for re-hearing and that is how the matter has been heard today.

8. As the matter stands today, it is not in dispute that the charge-sheet in relation to C.R. No. 131/2002 has already been filed. The learned Counsel appearing for the Petitioners herein has also submitted that in case of any further investigation is required in the said matter and if the Petitioners are able to point out lapses on the part of the Investigation Agency in completing the said investigation, certainly the same can be brought to the notice of the Court where the Charge-sheet is filed and appropriate Order can be obtained under Section 173 (8) of the Code of Criminal Procedure from that Court and therefore as far as the charge-sheet relating to C.R.No. 131/2002, the grievance of the Petitioners does not survive for consideration of this Court.

9. Only grievance now remains to be considered is in relation to C.R.No. 130 of 2002, which pertains to the complaint filed by the Petitioner, wherein "B" Summary Report has been filed by the concerned I.O.

10. It cannot be disputed that it is a settled law

that the High Court in its writ jurisdiction or under Section 482 of the Code of Criminal Procedure is not expected to interfere in the proceedings at the stage where the investigation officer files Summary Report before the Magistrate on conclusion of the investigation. However, the rule is not without exceptions. It would all depend on the facts and circumstances of each case and, particularly, when the act on the part of the Investigation Officer in submitting "B" Summary and his reluctance to file charge-sheet is disclosed to be an arbitrary exercise of the powers as also can smack of mala fides on his part in doing so, certainly the powers of this Court to interfere in the matter cannot stand curtailed in any manner. In the case in hand, it is the contention on behalf of the Petitioners that the proceedings which were sought to be initiated by filing C.R. No. 131/2002, were in the nature of counterblast to the complaint lodged by the Petitioners vide C.R. No. 130/2002. That apart, it is further case of the Petitioners and not without justification, that the conduct of the Investigation Officer, even in the Court, discloses an attempt on his part even to misled the Court while trying to initiate prosecution against the Petitioners and neglecting the complaint of the

Petitioners against the persons who have sought to initiate the alleged false prosecution against the Petitioners.

11. Indeed, the record discloses that on 24th August, 2006, there was a categorical statement made before this Court on behalf of the Respondents that charge-sheets would be filed in both the cases. Obviously, such a statement must have been made on behalf of the Respondents pursuant to the I.O. having arrived at a conclusion that the investigation discloses non-cognizable offence which is required to be tried before the Court. It is further pertinent to note that the same stand in that case was re-reiterated by the Respondents before this Court on 11th September, 2006. It is also pertinent to note that the Respondents could not justify their action regarding failure on their part to submit the charge-sheet when the matter came up before the Supreme Court in Criminal Appeal No. 733/2007. What is further more important to note is that the information which has been revealed across the bar on behalf of the Respondents during the course of hearing of the matter, the learned A.P.P. on the instructions from the same Investigation Officer, who is present in Court, submitted that the decision

not to file the charge-sheet in relation to C.R. No. 130/2002 was taken by the Deputy Superintendent of Police in October, 2005 and the same is revealed from the record available with the concerned Investigation Officer. If the Investigation Officer was fully aware of such a decision, we fail to understand as to how he could inform the Court on 24th August, 2006 that the charge-sheet would be filed in both the matters.

12. Curiously, it is now sought to be contended that when the matter came up for hearing on 1st October, 2007 before this Court the Investigation Officer through the learned A.P.P. had clarified to this Court that on 24th August, 2006 it was informed that necessary reports would be filed in the Court and not the charge-sheets. Neither there is any affidavit to that effect nor any documentary material placed on record which could reveal that the statement of the concerned Investigation Officer on 24th August, 2006 was in relation to the filing of the Report and not in relation to the filing of the Charge-sheet. As the law stands, we are bound by the observations made in the Order i.e. dated 24th August, 2006 that there was a clear assurance given on behalf of the Respondents that the charge-sheet would be filed in both the matters.

Besides, the matter was carried to the Apex Court and the Respondents could not dispute the said fact even in the said proceeding.

13. Furthermore, the Order of 11th September, 2006 in Criminal Application No. 350/2006 confirms that the information which was given to the Court on 24th August, 2006 was regarding filing of the charge-sheets and not regarding filing of the Reports. It is also pertinent to note that Order dated 11th September,2006 in Criminal Application No. 350/2006 was not brought to our notice on 1st October, 2007 when the said Order was passed in the matter.

14. In the circumstances, the conduct of the Investigation Officer consistently discloses concerted effort on the part of the Investigation Officer not only to suppress the truth but also to misled this Court by making false statements. If the decision of the Deputy Superintendent of Police, in relation to C.R. No. 130 of 2002 was to the effect that no charge-sheet was required to be filed, we fail to understand how the Investigation Officer could inform the Court through the learned A.P.P. on 24th August, 2006 that the charge sheet would be filed in both the

matters on 11th September, 2006. If it was very clear to the knowledge of the Respondents that what was informed to the Court was that they would file the charge-sheets in both the matters, including the one relating to C.R.No. 130/2002 and if this was clear to them as long back as in the month of August and September, 2006, we fail to understand how the same Investigation Officer could give wrong information to this Court on 1st October, 2007 to the effect that **"what was informed by him to the Court on 11th September, 2006 was that the necessary reports would be submitted"**. The record clearly discloses that inspite of the assurance given to the Court on behalf of the Respondents that the charge-sheets would be filed in both the matters, including the matter relating to C.R. No. 130/2002, as long back in August and September, 2006, in fact only the "B" Summary Report was filed in relation to C.R. No. 130/2002. The Petitioner therefore is justified in contending that the action on the part of the Respondents in submitting "B" Summary Report discloses mala fide on their part and it requires interference by this Court in its writ jurisdiction.

15. As regards the "B" Summary Report is concerned,

it is informed that it was submitted on 11th September, 2006 to the Court of Judicial Magistrate, First Class, Vasai and it is registered as Summary No. 17 of 2006.

16. In the facts and circumstances of the case, it would be proper to direct the Superintendent of Police, State C.I.D. to take over forthwith the investigation of the matter relating to C.R. No. 130/2002 and to investigate into the matter and to take an appropriate decision in that regard, after recording further statements of the Petitioners, if they so desire, bearing in mind the observations made herein as well as in the decision of the Apex Court and taking into consideration the contentions which are sought to be raised by the Petitioners in relation to facts stated by him in his complaint, as expeditiously as possible and within a period six weeks from today.

17. The "B" Summary Report submitted to the Judicial Magistrate, First Class, Vasai bearing No. 17 of 2006 shall stand forthwith withdrawn and the concerned Magistrate shall not pass any Order on the said Report and shall return the same to the concerned police station forthwith.

18. The matter does not conclude here. As already observed above, we find that the concerned Investigation Officer has clearly tried to misled the Court by giving false information. It is therefore, necessary to issue contempt notice to the concerned Investigation Officer, namely, Mr. P.S. Raut, the Deputy Superintendent of Police, State C.I.D posted in State C.I.D. office, Konkan Bhuwan, Navi Mumbai. The Registry is directed to register separate contempt proceeding in this relation, based on this order.

19. The Charge of contempt which the said Investigation Officer required to answer is to the effect that :-

(i) The contemnor being fully aware that the Deputy Superintendent of Police had decided not to file the charge-sheet in relation to C.R.No. 130/2002, which was lodged at Nalasopara Police Station, Mumbai, with an intention to mislead the Court and to get the writ petition No. 364/2006 dismissed, which was filed for a direction for transfer of investigation in relation to C.R.No. 131/2002, lodged at Nalasopara Police Station, as also for

direction to file charge-sheet in relation to C.R. No. 130/2002, falsely informed the Court that the charge-sheets would be filed in both the matters, including C.R. No. 130/2002, on 11th September, 2006 by 3.00 p.m. and inspite of giving such assurance, the charge-sheet in C.R. No. 130/2002 was not filed, either on 11th September, 2006 or on 13th September, 2006, or anytime thereafter while the charge-sheet was filed in relation to C.R.No. 131/2002.

(ii) Inspite of knowing fully well that information given to this Court on 24th August, 2006 that the charge-sheet would be filed in both the matters, including C.R.No. 130/2002 and which fact was re-reiterated before this Court on 11th September, 2006 in Criminal Application 350/2006, again falsely informed to the Court on 1st October, 2006 that what was informed to this Court on 24th August, 2006 was that necessary Reports would be filed in the Court, meaning thereby that no assurance was given by the concerned Investigation Officer that the charge-sheets would be filed in Court

in both the matters.

(iii) The assurance which was given to the Court on 24th August, 2006 was transmitted to the Court by the learned APP in the presence of the concerned Investigation Officer as the same is revealed from the Order dated 24th August, 2006 and confirmed by the order of the Apex Court. Besides, the same was re-reiterated on 11th September, 2006. All this was to the knowledge of the contemnor.

(iv) The concerned Investigation Officer having falsely informed that the charge-sheet would be filed in both the matters knowing well that no charge-sheet was contemplated in C.R. No. 130/2002 and that it was done with intention to get the writ petition No. 264 of 2006 dismissed. If the correct information would have been imparted to the Court on 24th August, 2006, the Petition would not have been disposed of in the manner it was disposed of nor the subsequent proceedings would have taken place and it obviously would not have wasted the time of the Court in that regard.

(v) The conduct of the concerned Investigation Officer before this Court, therefore, discloses giving false information to the Court with full knowledge that the information was false and misleading the Court to get the petition disposed of without getting any relief to the petitioner which he was entitled to get in the facts and circumstances of the case and thereby tried to hoodwink the Court and illegally defy the process of the Court and the same has resulted in unwarranted interference in administration of justice, warranting initiation of proceeding in exercise of powers under Section 14 of the Contempt of Courts Act read with Article 215 of the Constitution of India.

20. Contempt Notice is therefore being issued against the concerned Investigation Officer under Section 14 of the Contempt of Courts Act read with Article 215 of the Constitution of India, which is accepted by the concerned officer who is present in the Court.

21. The contemnor shall submit his reply to the above charges of contempt by 9th of January, 2008.

22. The Contemnor- the concerned Investigation Officer Mr. P.S. Raut has taken note of this contempt notice in open Court, in addition he is allowed to collect the copy of this order of charge of Contempt of Court from the Registry.

23. Considering the conduct of the Investigating Officer Shri P.S. Raut, it would be necessary for the police administration and the Government of Maharashtra to take appropriate action against the concerned Officer, who has tried to hoodwink the Court by giving false information to the Court. As it is very serious matter and when the said officer is of the rank of Deputy Superintendent of Police, he should have known the consequences of giving false information to the Court and therefore, we hope and trust that the Authorities will take note of this matter and would take an appropriate action in accordance with the provisions of law.

24. Rule is made absolute in the above terms with

costs of Rs. 5000/- (Rupees five thousands only) to be paid by the concerned Investigation Officer Mr. P.S. Raut, the Dy.S.P. State C.I.D., to the Petitioners within six weeks.

25. Registry to inform this Order telephonically forthwith to the Judicial Magistrate, First Class, Vasai before whom the "B" Summary Report is pending for Order.

[A.A.SAYED, J.] [R.M.S.KHANDEPARKAR,J.]